

**REMARKS**

**Summary Of The Office Action & Formalities**

**Status of Claims**

Claims 1-3 and 5-20 are all the claims pending in the application. By this Amendment, Applicant is canceling claim 5, amending claims 1 and 13 and adding claims 21 and 22. No new matter is added.

**Art Rejections**

1. Claims 1-3 and 5-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Walker et al. (US 5,564,414) in view of Barberi et al. (US 6,327,017), and further in view of Liou (US 5,895,159).

2. Claims 1-3 and 5-20 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-8 of copending Application No. 10/532,073. Applicant will address this rejection as necessary, if copending Application No. 10/532,073 results in claims that are unpatentable over claims in the present application based on nonstatutory obviousness-type double patenting, but otherwise allowable.

Applicant respectfully traverses the rejection under 35 U.S.C. § 103..

**Claim Rejections - 35 U.S.C. § 103**

*1. Claims 1-3 And 5-20 Over Walker et al. (US 5,564,414) In View Of Barberi et al. (US 6,327,017), And Further In View Of Liou (US 5,895,159).*

In rejecting claims 1-3 and 5-20 over Walker et al. (US 5,564,414) in view of Barberi et al. (US 6,327,017), and further in view of Liou (US 5,895,159), the grounds of rejection state:

Regarding claims 1, 2, 3, 5, 10, 12, and 13-17, Walker et al. discloses a fluid dispensing device comprising a body (12, 112)

incorporating a dispenser orifice, a reservoir (13) containing the fluid, and a dispensing member (metering valve/stem of MDI), the device being further characterized in that it comprises a dose indicator with an LCD display means (column 7, lines 30-35) that displays the number of doses delivered to the patient (abstract). A switch controls the LCD screen such that upon actuation of the device by a user, two portions of the switch (135) contact each other and an electric pulse is sent to the counting device (130) to change the LCD display (column 7, lines 40-50).

Walker et al. is silent as to the display requiring no energy to keep the display unchanged and only a small amount of energy to change it. However, Barberi et al. discloses a bistable nematic liquid crystal display for use small portable devices (see column 19, lines 50-55). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have used a bistable nematic LCD as taught by Barberi et al. in place of the LCD of Walker et al. in order to preserve power. The modified reference would require no energy to keep the display unchanged and only a small electric pulse to change it.

Furthermore, the modified Walker et al. reference does not disclose that the energy to change the display is created by the contacting portions of the switch and that no battery is required to operate the device. However, Liou discloses a current producer (60) that produces an instantaneous current upon a pressing bar (31) striking an internal flint (column 2, lines 47-53) in order to avoid the use of an external power source (column 1, lines 45-55). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have replaced the battery and switch mechanism of the modified Walker et al. device with a pressing bar and flint current producer as taught by Liou in order to produce the electric pulse needed to change the LCD display without the need for an external power supply (i.e., by replacing the “striking bar” and “contacting portion” of Walker et al. seen in Figure 3B with the pressing bar and flint of Liou, respectively).

Regarding claim 11, the dose indicator disclosed by Walker et al. is thin in structure (see figure 2A).

Regarding claims 6, the electric producer of Liou transforms the mechanical movement of the striker pin into an electric pulse that would be used to change the display in the modified device.

Regarding claims 7 and 18, the interaction in the modified device would involve one portion of the device (pressing bar) striking against another portion (flint) of the device during actuation.

Regarding claims 8, 9, 19, and 20, the reservoir and striker pin are displaceable relative to the body (i.e., user presses top of reservoir/pin/pressing bar to actuate dispensing) and the contacting portion (flint) is located on the body and unable to move relative to the body (see Figures 3B and 3D). In addition, Walker et al. discloses a spring for biasing the striker pin away from the contacting portion (see figure 3D).

Office Action at pages 2-4.

Liou (US patent 5,895,159) discloses a trigger of the glue feeding means 50 and a pressing bar 31 of the current producer 60. There is thus a specific energy creating system that is ***separate from the glue dispensing system***. The user thus has to provide two different actions, one involving the pressing bar to create a spark to ignite the gas, and another one on the trigger to feed the glue.

Accordingly, even if, for the sake of argument, one were to combine Walker with Barberi and Liou, the result would be the Walker device with a current producer as described in Liou, ***requiring a separate actuation to create the energy***.

Further, it would not have been obvious to one skilled in the art, based on the disclosure in Liou, that the energy producer could be formed on the dispenser member. ***To the contrary***, Liou teaches away from that by clearly providing two separate systems.

Moreover, combining Walker with Barberi and with Liou would not have been obvious. Indeed, these three references are in entirely different technical fields, and one skilled in the art, at the filing date of the present application, would never have combined these references. There is simply no rationale for doing so. Nothing in the prior art provides a reason for modifying the

device in Walker to provide a display requiring no energy to keep the display unchanged. There is also no given rationale to replace the battery by another energy source. Rather, combining these three references would require non-obvious steps.

Of course, once the invention has been disclosed and a roadmap provided in the form of the specification and figures, it would be simple for one to piece together the invention from disparate prior art references based on this roadmap. However, such hindsight reconstruction is legally impermissible.

#### *New Claims*

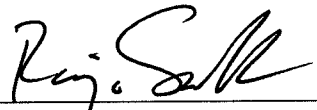
Claims 21 and 22 are added for additional coverage and allowable at least by reason of their respective dependencies, as well as because the prior art does not disclose or suggest a device in which the energy required to change the display is created during dispensing of the fluid by the dispenser member.

#### *Conclusion*

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



Raja N. Saliba  
Registration No. 43,078

SUGHRUE MION, PLLC  
Telephone: (202) 293-7060  
Facsimile: (202) 293-7860

WASHINGTON OFFICE

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